

ESTTA Tracking number: **ESTTA777903**

Filing date: **10/19/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	GrubHub Holdings Inc.
Granted to Date of previous extension	10/19/2016
Address	1065 Avenue of the Americas New York, NY 10018 UNITED STATES

Attorney information	Jordan A. LaVine Flaster/Greenberg P.C. 1835 Market Street Suite 1050 Philadelphia, PA 19103 UNITED STATES jordan.lavine@flastergreenberg.com, linda.ladzenski@flastergreenberg.com
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Applicant Information

Application No	86892860	Publication date	06/21/2016
Opposition Filing Date	10/19/2016	Opposition Period Ends	10/19/2016
Applicant	Chubby's 1 1/2 Hearth, Inc. 239 Monmouth Street Gloucester City, NJ 08030 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: On-line retail store services featuring food, clothing
Class 043. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Catering services; Restaurant services

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2998028	Application Date	07/31/2004
Registration Date	09/20/2005	Foreign Priority Date	NONE
Word Mark	GRUBHUB		

Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2002/09/15 First Use In Commerce: 2003/04/01 Advertising and commercial information services, via the internet		

U.S. Registration No.	3980740	Application Date	08/23/2010
Registration Date	06/21/2011	Foreign Priority Date	NONE

Word Mark	GRUBHUB.COM EATING MADE EASY		
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Design Mark			
Description of Mark	The mark consists of the stylized word "grubHub.com" in red above the stylized words "eating made easy" in light red.		
Goods/Services	Class 035. First use: First Use: 2010/08/15 First Use In Commerce: 2010/08/15 On-line advertising and marketing services		

U.S. Registration No.	4278460	Application Date	02/13/2012
Registration Date	01/22/2013	Foreign Priority Date	NONE

Word Mark	ORDERHUB POWERED BY GRUBHUB		
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Design Mark	ORDERHUB POWERED BY GRUBHUB
Description of Mark	NONE
Goods/Services	Class 042. First use: First Use: 2012/01/25 First Use In Commerce: 2012/01/25 Providing online non-downloadable software which allows member restaurants to manage customer order information using mobile devices; Computer software design and development in the fields of restaurant delivery/carryout, customer service and mobile applications, specifically design and development of software that retrieves orders, indicates order statuses, displays a selected order, changes order status of a selected order, and communicates order status updates to customers or a restaurant server where software adopts on mobile appliances to monitor the point-of-sale system for updates to menu information, and to transmit updated menu information to restaurant servers coupled to a database storing menus

U.S. Registration No.	4278480	Application Date	02/20/2012
Registration Date	01/22/2013	Foreign Priority Date	NONE

Word Mark	ORDERHUB POWERED BY GRUBHUB
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Design Mark	orderHub powered by GrubHub
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Description of Mark	The mark consists of words and letters in a stylized form without claim to color.
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Goods/Services	Class 042. First use: First Use: 2012/02/08 First Use In Commerce: 2012/02/08 Providing online non-downloadable software which allows member restaurants to manage customer order information using mobile devices; Computer software design and development in the fields of restaurant delivery/carryout, customer service and mobile applications, specifically design and development of software that retrieves orders, indicates order statuses, displays a selected order, changes order status of a selected order, and communicates order status updates to customers or a restaurant server where software adopts on mobile appliances to monitor the point-of-sale system for updates to menu information, and to transmit updated menu information to restaurant servers coupled to a database storing menus
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U.S. Registration No.	4279002	Application Date	05/25/2012
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Registration Date	01/22/2013	Foreign Priority Date	NONE
Word Mark	GRUBHUB		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 2005/08/31 First Use In Commerce: 2005/08/31 Printed publications, namely, informational brochures, booklets, forms and flyers featuring information about how to advertise goods and services in the marketplace; folders; stickers, namely, bumperstickers and decals for windows; coasters made of paper; coasters made of cardboard; document portfolios and document folders made of imitation leather; pens		

U.S. Registration No.	4279207	Application Date	06/01/2012
Registration Date	01/22/2013	Foreign Priority Date	NONE
Word Mark	GRUBHUB		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2007/05/31 First Use In Commerce: 2008/09/30 Shirts; underwear; outerwear in the nature of rain wear		

U.S. Registration No.	4363972	Application Date	10/25/2012
Registration Date	07/09/2013	Foreign Priority Date	NONE
Word Mark	GRUBHUB		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 021. First use: First Use: 2012/03/31 First Use In Commerce: 2012/03/31 Cups and mugs

U.S. Registration No.	4368564	Application Date	12/12/2012
Registration Date	07/16/2013	Foreign Priority Date	NONE
Word Mark	GRUBHUB		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 009. First use: First Use: 2004/09/01 First Use In Commerce: 2004/09/01 Decorative magnets; downloadable software in the nature of mobile applications, namely, software for use in facilitating the advertising and marketing of restaurants to consumers, for accessing restaurant menus, for placing restaurant orders, for monitoring the status and/or location of restaurant orders, and for assisting restaurant delivery operators with mapping, planning, and tracking their orders, trips, and finances</p> <p>Class 042. First use: First Use: 2004/00/00 First Use In Commerce: 2004/00/00 Providing websites featuring temporary use of non-downloadable software, namely, software for use in facilitating the advertising and marketing of restaurants to consumers, for accessing restaurant menus, for placing restaurant orders, for monitoring the status and/or location of restaurant orders, and for restaurantsto manage customer order information</p>		

U.S. Registration No.	4616605	Application Date	01/23/2014
Registration Date	10/07/2014	Foreign Priority Date	NONE
Word Mark	SEAMLESS PARTNERS WITH GRUBHUB		

Design Mark	
Description of Mark	<p>The mark consists of the word "seamless" in the color white with the wording "partners" with "GrubHub" underneath the word "seamless" and in the color white, all of which appears within a red bone-like rectangular shape.</p>
Goods/Services	<p>Class 009. First use: First Use: 2014/02/12 First Use In Commerce: 2014/02/12 Downloadable software in the nature of mobile applications, namely, software for use in facilitating the advertising and marketing of restaurants to consumers, for accessing restaurant menus, for placing restaurant orders, for monitoring the status and/or location of restaurant orders, and for assisting restaurant delivery operators with mapping, planning, and tracking their orders, trips, and finances</p> <p>Class 035. First use: First Use: 2014/02/12 First Use In Commerce: 2014/02/12 Computerized online ordering services in the field of restaurants and food; electronic processing of restaurant and food orders for others; online ordering services featuring restaurants take-out and food; online ordering services in the field of restaurant take-out and delivery; promoting and marketing the goods and services of others in the field of restaurants and food; administration of programs for enabling participants to obtain discounts on products and services in the field of restaurants and food; advertising services via the internet; providing consumer information, namely, ratings and reviews of restaurants and compilations of ratings and reviews of restaurants; on-line advertising and marketing services for restaurants, namely, social media, internet and mobile marketing; on-line advertising and marketing services for restaurants, namely, social media, internet and mobile marketing; providing consumer information in the field of restaurants and food; providing consumer information via a global computer network in the field of restaurants and food; advertising services via the internet; providing consumer information, namely, ratings and reviews of restaurants and compilations of ratings and reviews of restaurants; customer service, namely responding to customer inquiries for others in the field of restaurant delivery and carry-out</p> <p>Class 041. First use: First Use: 2014/02/12 First Use In Commerce: 2014/02/12 Blogs featuring news, information and commentary in the field of dining, restaurants and food; providing recognition and incentives by the way of awards and contests to demonstrate excellence in the fields of restaurants and food</p> <p>Class 042. First use: First Use: 2014/02/12 First Use In Commerce: 2014/02/12 Providing websites featuring temporary use of non-downloadable software, namely, software for use in facilitating the advertising and marketing of restaurants to consumers, for accessing restaurant menus, for placing restaurant orders, for monitoring the status and/or location of restaurant orders, and for restaurantsto manage customer order information; providing online non-downloadable software which allows member restaurants to manage customer order information using mobile devices; computer software design and develop-</p>

	ment in the fields of restaurant delivery/carryout, customer service and mobile applications, specifically design and development of software that retrieves orders, indicates order statuses, displays a selected order, changes orderstatus of a selected order, and communicates order status updates to customers or a restaurant server where software adopts on mobile appliances to monitor thepoint-of-sale system for updates to menu information, and to transmit updated menu information to restaurant servers coupled to a database storing menus; providing online non-downloadable software which allows member restaurants to manage customer order information using mobile devices
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U.S. Application No.	86071159	Application Date	09/21/2013
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	GRUBHUB SEAMLESS
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Description of Mark	The mark consists of the stylized word "grubHub" in the color red to the right of the word "seamless", which appears in the color white within a red bone-like rectangular shape.
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Goods/Services	<p>Class 009. First use: First Use: 0 First Use In Commerce: 0 Downloadable software in the nature of mobile applications, namely, software for use in facilitating the advertising and marketing of restaurants to consumers, for accessing restaurant menus, for placing restaurant orders, for monitoring the status and/or location of restaurant orders, and for assisting restaurant delivery operators with mapping, planning, and tracking their orders, trips, and finances</p> <p>Class 035. First use: First Use: 0 First Use In Commerce: 0 Computerized online ordering services in the field of restaurants and food; electronic processing of restaurant and food orders for others; online ordering services featuring restaurants take-out and food; online ordering services in the field of restaurant take-out and delivery; promoting and marketing the goods and services of others in the field of restaurants and food; administration of programs for enabling participants to obtain discounts on products and services in the field of restaurants and food; advertising services via the internet; providing consumer information, namely, ratings and reviews of restaurants and compilations of ratings and reviews of restaurants; on-line advertising and marketing services for restaurants, namely, social media, internet and mobile marketing; on-line advertising and marketing services for restaurants, namely, social media, internet and mobile marketing; providing consumer information in the field of restaurants and food; providing consumer information via a global computer network in the field of restaurants and food; advertising services via the internet; providing consumer information, namely, ratings and reviews of restaurants and compilations of ratings and reviews of restaurants; customer service, namely responding to customer inquiries for others in the field of restaurant delivery and carry-out</p> <p>Class 041. First use: First Use: 0 First Use In Commerce: 0 Blogs featuring news, information and commentary in the field of dining, restaurants and food; providing recognition and incentives by the way of awards and contests to demonstrate excellence in the fields of restaurants and food</p> <p>Class 042. First use: First Use: 0 First Use In Commerce: 0 Providing websites featuring temporary use of non-downloadable software, namely, software for use in facilitating the advertising and marketing of restaurants to consumers, for accessing restaurant menus, for placing restaurant or-</p>
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	<p>ders, for monitoring the status and/or location of restaurant orders, and for restaurantsto manage customer order information; providing online non-downloadable software which allows member restaurants to manage customer order information using mobile devices; computer software design and development in the fields of restaurant delivery/carryout, customer service and mobile applications, specifically design and development of software that retrieves orders, indicates order statuses, displays a selected order, changes orderstatus of a selected order, and communicates order status updates to customers or a restaurant server where software adopts on mobile appliances to monitor thepoint-of-sale system for updates to menu information, and to transmit updated menu information to restaurant servers coupled to a database storing menus; providing online non-downloadable software which allows member restaurants to manage customer order information using mobile devices</p>
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Attachments	<p>78460059#TMSN.png(bytes) 85113194#TMSN.png(bytes) 85540888#TMSN.png(bytes) 85547463#TMSN.png(bytes) 85635406#TMSN.png(bytes) 85640642#TMSN.png(bytes) 85763034#TMSN.png(bytes) 85800677#TMSN.png(bytes) 86173223#TMSN.png(bytes) 86071159#TMSN.png(bytes) notice of opposition chubb hub.pdf(94508 bytes)</p>
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/jordan lavine/
Name	Jordan A. LaVine
Date	10/19/2016

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

GRUBHUB HOLDINGS, INC.	:	
	:	
	:	Re: Application Serial No. 86892860
v.	:	
	:	
	:	
CHUBBY'S 1 1/2 HEARTH, INC..	:	

NOTICE OF OPPOSITION

In the matter of trademark Application Serial No. 86892860 filed February 1, 2016, and published for opposition in the *Official Gazette* of June 21, 2016, GrubHub oldings, Inc. ("Opposer"), a Delaware corporation, having a business address of 1065 Avenue of the Americas, New York, NY 10018, UNITED STATES, believes that it will be damaged if a registration issues for the services therein identified and hereby opposes the registration of said trademark. The grounds for opposition are as follows:

1. Applicant seeks to register **CHUBB HUB** as a trademark for the following services in International Classes 35 and 43: on-line retail store services featuring food, clothing (Class 35); catering services; restaurant services (Class 43), as evidenced by the publication of said mark in the *Official Gazette* of June 21, 2016.
2. Opposer is the nation's leading online and mobile food ordering company dedicated to connecting diners with local takeout restaurants. Opposer's online and mobile ordering platforms allow diners to order directly from approximately 30,000 takeout restaurants in more than 800 U.S. cities and London.
3. Since at least as early as September, 2002, Opposer has used the mark and name **GRUBHUB** in connection with its business and related products and services. Opposer owns

Registration Nos. 2,998,028, 3,980,740, 4,278,460, 4,278,480, 4,279,002, 4,279,207, 4,363,972, 4,368,564, and 4,616,605 and Application Serial No. 86/071,159 for its various products and services in the U.S. Patent and Trademark Office.

4. Opposer's **GRUBHUB** trademark is extremely well-known and is an extremely valuable asset of Opposer.

5. Opposer's **GRUBHUB** mark is inherently distinctive as used in connection with Opposer's products and services.

6. Applicant seeks to register the mark **CHUBB HUB** under Section 1(b) of the Lanham Act based upon Applicant's bona fide intent to use the mark in commerce.

7. On information and belief, Applicant did not use the **CHUBB HUB** mark prior to the February 1, 2016 filing date of its trademark application herein opposed.

8. Opposer is the prior user of its **GRUBHUB** mark by virtue of its use of the mark in commerce since at least as early as September, 2002.

9. The respective **GRUBHUB** and **CHUBB HUB** marks are substantially similar in sight, sound and meaning. The respective marks share the beginning wording/sound "ub" and the suffix "Hub" and Applicant's mark only differs by using the prefix "**Chub**" rather than "**Grub**." This is not a sufficient basis for distinguishing the marks when the products and services are so related, as discussed *infra*.

10. Opposer's products and services and Applicant's services are extremely similar. Opposer is the leading online and mobile food delivery company in the United States. The services identified the opposed application are the same or closely similar to Opposer's products and services.

11. Applicant's application is not restricted by trade channel. Applicant's services and Opposer's products and services are likely to be offered to an overlapping class of purchasers through the same and similar channels of trade.

12. Applicant's **CHUBB HUB** mark as used in connection with the services identified in its application so resembles Opposer's **GRUBHUB** mark that it is likely to cause confusion, mistake or deception.

13. If Applicant is permitted to register the mark **CHUBB HUB** for the services identified in the application herein opposed, confusion of the trade and public is likely to result, such confusion resulting in damage and injury to Opposer.

14. Purchasers, potential purchasers and the relevant public, upon seeing Applicant's **CHUBB HUB** mark used in connection with the services identified in its application would be likely to believe in error that such goods are provided in association or affiliation with or under the sponsorship of or license from Opposer.

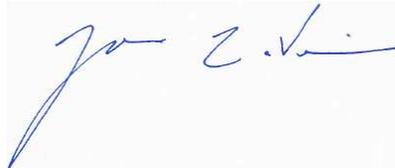
15. If Applicant is permitted to register its mark for the services set forth in the application herein opposed, persons familiar with the products and services of Opposer would be likely to purchase Applicant's services as services sponsored by or produced in affiliation with or under the sponsorship of Opposer. Furthermore, any defect, objection to or fault found with Applicant's services provided under its mark would necessarily reflect on and seriously injure the reputation that Opposer has established for its products and services under the **GRUBHUB** mark.

16. If Applicant is granted a registration for the mark herein opposed, it would obtain thereby at least a prima facie exclusive right to use the mark. Such registration would be a source of damage and injury to Opposer and Opposer's customers.

WHEREFORE, Opposer prays that registration of the mark of Application Serial No. 86892860 be refused and that this opposition be sustained.

Respectfully submitted,

FLASTER/GREENBERG P.C.

A handwritten signature in blue ink, appearing to read "Jordan A. LaVine", is written over a light gray rectangular background.

October 19, 2016

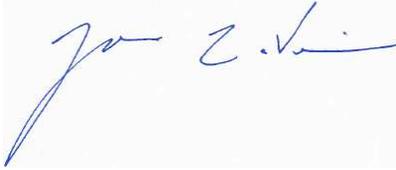
Jordan A. LaVine
1835 Market Street, Suite 1050
Philadelphia, PA 19103
215.279-9389

ATTORNEYS FOR OPPOSER

Certificate of Service

I certify that a true and correct copy of Opposer's Notice of Opposition against Application Serial No. 86892860 was served by First Class Mail on Applicant at the following addresses on October 19, 2016:

Chubby's 1 1/2 Hearth, Inc.
239 Monmouth Street
Gloucester City, NJ 08030

A handwritten signature in blue ink, appearing to read "Jo E. Greenberg", is written over a light gray rectangular background.

Flaster/Greenberg P.C.